

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA  
3 BEFORE THE HONORABLE CARL W. HOFFMAN, MAGISTRATE JUDGE  
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4 UNITED STATES OF AMERICA, :  
5 :  
6 Plaintiff, : No. 2:16-cr-100-GMN-CWH  
7 :  
8 -vs- : August 31, 2018  
9 :  
10 JAN ROUVEN FUECHTENER, : Las Vegas, Nevada  
11 :  
12 Defendant. :  
13 \_\_\_\_\_ :

11 TRANSCRIPT OF MOTION TO WITHDRAW

13 APPEARANCES:

14 FOR THE PLAINTIFF: LISA CARTIER-GIROUX  
15 Assistant United States Attorney  
16 Las Vegas, Nevada

17 FOR THE DEFENDANT: KAREN CONNOLLY  
18 Attorney at Law  
19 Las Vegas, Nevada

20 ALSO PRESENT: ROBERT DeMARCO  
21 Attorney at Law  
22 Las Vegas, Nevada

23 Transcribed by: Margaret E. Griener, CCR #3, FCRR  
24 Official Reporter  
25 400 South Virginia Street  
Reno, Nevada 89501

1 LAS VEGAS, NEVADA, FRIDAY, AUGUST 31, 2018, 10:02 A.M.

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4 THE CLERK: This is the time set for United  
5 States of America versus Jan Rouven Fuechtener, case number  
6 2:16-cr-100-GMN-CWH.

7 Counsel, please enter your appearances.

8 MS. CARTIER-GIROUX: Lisa Cartier-Giroux for the  
9 United States. I'm here for Ms. Roohani. I did try this case  
10 with her. She's at a funeral in D.C., she actually couldn't  
11 appear today, and she wanted me to tell you that.

12 THE COURT: Thank you.

13 MS. CONNOLLY: Karen Connolly for Jan Rouven  
14 Fuechtener who's present.

15 THE COURT: Good afternoon, counsel. Good  
16 afternoon, sir.

17 Document 287 is Ms. Connolly's motion to  
18 withdraw as counsel, and it's based upon a theory of  
19 constructive discharge.

20 Mr. Fuechtener, is it your desire to discharge  
21 Ms. Connolly as counsel?

22 THE DEFENDANT: Well, that depends on if I get  
23 the new counsel.

24 THE COURT: Okay.

25 THE DEFENDANT: And there's a motion pending.

1 THE COURT: Okay. I understand.

2 THE DEFENDANT: I have no issue with  
3 Ms. Connolly that I want to get rid of her.

4 THE COURT: Okay.

5 THE DEFENDANT: But I understand that she needs  
6 to make a decision because we have a sentencing date set.

7 THE COURT: All right.

8 MR. DeMARCO: Your Honor, I apologize, I'm  
9 attorney Robert DeMarco from Chesnoff & Schonfeld, bar number  
10 12359.

11 I know it's not on calendar, and we're not  
12 asking the Court to rule on it right now, but we -- for the  
13 record, just so we're clear, our firm did file a motion for  
14 release of funds for purposes of retaining specially appearing  
15 counsel Mr. Chesnoff and Schonfeld, that's docket 285.

16 Obviously we don't have any say so much in  
17 what's going on here today, but we just wanted to note for the  
18 record that there is a motion which contemplates funds that  
19 were previously restrained by the Court, as the Court I'm sure  
20 is aware, for a portion of that at least to be released for  
21 purposes of retaining our office to represent Mr. -- or the  
22 defendant.

23 And so I'm not sure who is going to rule on  
24 that. I know that the prosecutor did make a comment of -- I'm  
25 not sure if your Honor was going to rule on that or Judge

1 Navarro, but that motion is pending, and so I just wanted to  
2 say that for the record, your Honor.

3 THE COURT: Okay. I understood that, but I  
4 didn't know whether or not the withdrawal was contingent on  
5 approval of the motion.

6 MS. CONNOLLY: Your Honor, from my perspective,  
7 it's not from my perspective. You know, I'm not willing to  
8 be -- you know, the ugly stepsister who steps in and somebody  
9 else can -- you know, from my perspective that's an  
10 irreconcilable breakdown in communication.

11 So I'm not willing to continue my representation  
12 given what has gone on unbeknownst to me so it's me who is  
13 seeking to withdraw given what's going on so -- and there's a  
14 sentencing date on September 27th which I'm pretty sure the  
15 government is vehemently going to object to continuing.

16 So I don't want myself placed in a situation  
17 of -- if I was proceeding in sentencing, I would obviously be  
18 proactive and preparing and doing what I need to do.

19 I can't do my job effectively at this point, and  
20 I don't feel comfortable in the situation I've been placed in,  
21 and I don't appreciate what went on by my client unbeknownst  
22 to me.

23 So based on that, it's me who is seeking to  
24 withdraw.

25 THE COURT: Well, if you withdraw, then

1 Mr. Fuechtener has no counsel.

2 MS. CONNOLLY: I just -- I just can't -- I mean,  
3 given the circumstances, like I said, I think there's an --  
4 from my perspective he's being -- things are irreconcilable at  
5 this point.

6 I'm representing him, and he's contacting other  
7 attorneys, and he wants me to stay on maybe, but, I can't  
8 some -- I can't -- I can't represent someone under those  
9 circumstances.

10 He's put himself in this situation, I didn't  
11 place him in the situation. So what happens once I withdraw,  
12 with all due respect, that's his concern, not mine. I didn't  
13 cause this situation.

14 THE COURT: Well, two thoughts.

15 First of all, that whether or not another law  
16 firm ought to be talking to someone who is represented about  
17 the matter that previous counsel has represented to me creates  
18 some ethical issues, and I'm concerned about that, but I'm  
19 more concerned about Mr. Fuechtener not having representation.

20 The basis for your withdrawal is that -- I think  
21 is that you were discharged or constructively discharged, and  
22 I don't know that that's true at this point.

23 MS. CONNOLLY: Well, there was also some other  
24 issues between he and I that I would be happy to get into in a  
25 closed courtroom, but I don't think it's appropriate to do

1 with other parties present. They're between Mr. Fuechtener  
2 and I and maybe the Court.

3 But that's why I didn't put more in my affidavit  
4 because I don't want to say anything more in my claim to the  
5 court, you know.

6 THE COURT: All right. Well --

7 MS. CONNOLLY: So if you want me to get into  
8 those in detail, then I would ask for a closed courtroom to do  
9 that.

10 THE COURT: And, of course, we can do that.

11 As I was analyzing this trying to figure out  
12 where to come down on it, it doesn't sound like you've been  
13 discharged, and if you want to withdraw, then under the rules  
14 the withdrawal would be allowed if it could be accomplished  
15 without material adverse effect on the interests of the  
16 client.

17 Him not having counsel today and until something  
18 else happens is a problem. That's an adverse impact.

19 And so we can talk -- we can talk off -- in a  
20 closed hearing about what's going on, but I want to make sure  
21 that Mr. Fuechtener is protected here, and having you withdraw  
22 without having a new counsel onboard is not a good situation.

23 The fact that a motion has been filed, it sounds  
24 to me like the motion is that Chesnoff & Schonfeld will only  
25 get on the case contingent upon the approval of the motion to

1 free funds.

2 MS. CONNOLLY: Right, and that --

3 THE COURT: And so that contingency -- I haven't  
4 decided, and I think it's my call, I haven't decided whether  
5 or not those funds ought to be released. I'm not going to be  
6 held hostage by that motion.

7 I would -- you know, my thinking right now is  
8 that I deny the motion to withdraw without prejudice, we make  
9 the decision on releasing funds. If funds are available, then  
10 maybe Schonfeld steps in, but that's what I'm wrestling with.

11 So go ahead.

12 MS. CARTIER-GIROUX: Judge, our position is  
13 this, we don't want to get involved in the counsel  
14 appointment -- what their relationship is. That's for the  
15 Court to determine whether there is a breakdown of the  
16 relationship or whether or not you're going to -- there's a  
17 basis to allow withdrawal.

18 Our position is, is that -- that the motion  
19 actually is a motion to consider -- reconsider in front of  
20 Judge Navarro because there was a current R and R where the  
21 funds are now being held until the point of sentencing.

22 And there's some -- there's -- actually,  
23 Ms. Roohani had asked me to -- if you are planning on ruling  
24 on that motion, to allow her surreply, because in the reply  
25 there were new arguments brought up with regard to where we

1 believe that there's a confusion between forfeiture case law  
2 and restitution case law.

3 THE COURT: Yeah.

4 MS. CARTIER-GIROUX: And if you're going to --  
5 if your Honor is going to do that, and it's not a motion to  
6 reconsider in front of Judge Navarro, then we would ask that  
7 you allow us to do that.

8 But our position basically is this, is that if  
9 he -- if she is allowed to withdraw, and he is claiming that  
10 he is indigent without these funds, then he needs to have  
11 appointed counsel which would be CJA counsel, he needs to fill  
12 out the required paperwork to show his financial situation  
13 that he isn't able to hire an attorney.

14 And at that juncture the Court can appoint CJA  
15 counsel and then make a determination postsentencing if  
16 there's a surplus in the funds that are currently allocated  
17 for victim reimbursement and fines to pay CJA back, basically  
18 pay itself back.

19 But with regard to whether Mr. Chesnoff is the  
20 attorney or not, he doesn't -- you know, if I were accused of  
21 a crime, I'd want Alan Dershowitz to represent me. I can't  
22 afford Alan Dershowitz. He has a right to competent counsel  
23 if he's indigent, otherwise he can hire Mr. Chesnoff if he has  
24 the money.

25 I don't think we should be held hostage as to



1 whether or not she gets on or she gets off, meaning  
2 Ms. Connolly gets on or gets off, and we go forward in  
3 sentencing or not because he wants to hire somebody who he  
4 can't afford.

5 So that's our position basically. If you're  
6 going to allow her to get off, I'd ask that he be required --  
7 in the interim that we consider whether or not CJA should be  
8 appointed.

9 And I wanted to tell you the Public Defender's  
10 Office has a conflict with this case so it would have to be a  
11 CJA panel attorney, and that he file the proper financial  
12 affidavits required in order to permit the Court to make the  
13 assessment and later on potentially make an assessment as to  
14 whether or not surplus should be applied.

15 But that's our position. If Ms. Connolly wants  
16 to get off and there's a reason, a good reason for her to get  
17 off, we are not going to oppose that, but that's for the Court  
18 to determine.

19 MS. CONNOLLY: And that's what I would be asking  
20 the Court to do.

21 And, again, we're -- we go to sentencing in  
22 27 days on a very serious case so I -- you know, I'm bordering  
23 on I can't be effective for that in 27 days. There's experts,  
24 there's people that had been my intention to want to bring in.

25 I don't -- you know, a different scenario, if we

1 can push the sentencing off, but I'm kind of caught in the  
2 middle right now with all of this, and it's not a position  
3 that I appreciate being placed in by -- right now.

4 I'm kind of left in limbo where I pride myself  
5 on giving my clients effective assistance when I can't really  
6 do that right now is what I feel. So I'm stuck between a rock  
7 and a hard place.

8 THE COURT: I see a note here that this is the  
9 only motion that's referred to me so Judge Navarro would be  
10 the decider on releasing the funds so I won't get into that  
11 anyway.

12 All right. Did you have something else you  
13 wanted to add?

14 MR. DeMARCO: Your Honor, I was just going to  
15 say very briefly that we did extensively brief the issue as  
16 the Court is probably aware, and as the Court is also aware,  
17 the defendant does have a Sixth Amendment right to counsel of  
18 choice.

19 We did outline specifically the breakdown of the  
20 funds that could be held, the funds that could be released for  
21 purposes of sentencing and addressing postconviction, and so,  
22 again, we just point that out that we have briefed that, and  
23 it is contingent on that being released, your Honor.

24 THE COURT: Well, sure. I understand your  
25 motion. I don't know if I agree with your motion or not, but

1 I guess I'm not going to be the one deciding it anyway.

2 But my problem is that you've got a contingent  
3 offer to serve as counsel. One doesn't get to the other, you  
4 don't care about this case, it's only if you get the money so  
5 I'm not interested in trying to make that decision.

6 MR. DeMARCO: Okay.

7 THE COURT: What I want to do is I want to have  
8 a closed hearing with Ms. Connolly and Mr. Fuechtener and talk  
9 about this issue so I'll ask counsel to step out.

10 And I don't know who that is in the back, but  
11 the woman there. Thank you, ma'am.

12 MR. DeMARCO: Thank you, your Honor.

13 THE COURT: Thank you.

14 (Refer to a separate sealed transcript of  
15 proceedings.)  
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1 LAS VEGAS, NEVADA, FRIDAY, AUGUST 31, 2018, 10:36 A.M.

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4 THE COURT: All right. Here's what we're going  
5 to do is I'm going to hold this over until Thursday, the 6th  
6 of September at --

7 THE CLERK: 2:30 p.m., your Honor.

8 THE COURT: And during that time Mr. Fuechtener  
9 and Ms. Connolly are going to continue to discuss this issue,  
10 and then we'll know more -- we're basically kicking it down  
11 the road for a week to allow them to talk more.

12 MS. CARTIER-GIROUX: Okay.

13 THE COURT: And if they haven't resolved the  
14 matter, then Mr. Fuechtener should submit with Ms. Connolly's  
15 help a financial affidavit which will explain his financial  
16 situation and whether or not he's eligible for CJA counsel.

17 Yes, sir.

18 THE DEFENDANT: Is there a way to get a few more  
19 days? Because I might have to call Germany and -- just a few.

20 MS. CONNOLLY: Judge, I don't know if in a few  
21 more days, if the government would agree to push the  
22 sentencing again. That's my concern is a sentencing date,  
23 and.

24 As I indicated, I don't even know if my expert  
25 who I wanted to use would be available now because I didn't

1 contact them or have them onboard because of the issues we've  
2 talked about, and I understand the government may be reluctant  
3 to do that, however, that's kind of where we're at.

4 THE COURT: Well, a week will be enough time I'm  
5 hopeful. If it's not enough time, and there's good reason  
6 that it's not enough time, then I'll give more time, but my  
7 expectation is that you contact who you need to and make a  
8 decision, or establish to me to my satisfaction that you are  
9 unable to do that.

10 THE DEFENDANT: Okay.

11 THE COURT: We'll leave it at that.

12 Any need for clarification from the government?

13 MS. CARTIER-GIROUX: No, your Honor, thank you.

14 THE COURT: Ms. Connolly?

15 All right. Thank you very much.

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17  
18 I certify that the foregoing is a correct  
19 transcript from the record of proceedings  
in the above-entitled matter.

20 /s/Margaret E. Griener 5/3/2019  
Margaret E. Griener, CCR #3, FCRR  
21 Official Reporter  
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